

HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION,  
Plaintiff,  
vs.  
MOTOROLA, INC., et al.,  
Defendants.

MOTOROLA MOBILITY LLC, et al.,  
Plaintiffs,  
vs.

MICROSOFT CORPORATION,  
Defendants.

Case No. C10-1823-JLR

JOINT MOTION TO AMEND  
PROTECTIVE ORDER

**NOTED FOR:**  
Tuesday, July 23, 2013

Plaintiff Microsoft and Defendants Motorola Solutions, Motorola Mobility, and General Instrument, through counsel undersigned, respectfully move the Court for entry of the Second Amended Protective Order Regarding the Disclosure and Use of Discovery Materials being filed concurrently herewith. The parties' proposed Second Amended Protective Order (attached hereto as Exhibit A) revises the Amended Protective Order to allow for the disclosure

JOINT MOTION TO AMEND PROTECTIVE  
ORDER - 1

**No. C10-1823**

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1 of "Confidential Business Information" as part of any mock jury exercise conducted by a party,  
2 and to non-technical jury or trial consulting services. A red-line reflecting the parties'  
3 proposed revisions to the Amended Protective Order is attached hereto as Exhibit B.

4 DATED this 23rd day of July, 2013.

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**CERTIFICATE OF SERVICE**

I, Florine Fujita, swear under penalty of perjury under the laws of the State of Washington to the following:

1. I am over the age of 21 and not a party to this action.

2. On the 23<sup>rd</sup> day of July, 2013, I caused the preceding document to be served on counsel of record in the following manner:

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DATED this 23rd day of July, 2013.

s/ Florine Fujita

FLORINE FUJITA

# EXHIBIT A

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION, a  
Washington corporation,

Plaintiff,

vs.

MOTOROLA, INC., MOTOROLA  
MOBILITY LLC, and GENERAL  
INSTRUMENT CORPORATION,

Defendants.

CASE NO. C10-1823-JLR

**SECOND AMENDED PROTECTIVE  
ORDER REGARDING THE  
DISCLOSURE AND USE OF  
DISCOVERY MATERIALS**



1 Microsoft Corporation (“Microsoft”) and Motorola, Inc., Motorola Mobility, Inc., and  
2 General Instrument Corporation (collectively “Motorola”) hereby stipulate that this protective  
3 order should be entered and will govern the conduct of discovery in this case.

4 1. Confidential Business Information is information which has not been made public  
5 and which concerns or relates to the trade secrets, processes, operations, style of work, or  
6 apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers,  
7 inventories, amount or source of any income, profits, losses, or expenditures of any person, firm,  
8 partnership, corporation, or other organization, the disclosure of which information is likely to  
9 have the effect of causing substantial harm to the competitive position of the person, firm,  
10 partnership, corporation, or other organization from which the information was obtained, unless  
11 the Court is required by law to disclose such information.

12 2. (a) Any information submitted in pre-trial discovery or in a pleading, motion,  
13 or response to a motion in this action, either voluntarily or pursuant to order, and which is asserted  
14 by a supplier to contain or constitute Confidential Business Information shall be so designated by  
15 such supplier in writing, or orally at a deposition, conference, or hearing, and shall be segregated  
16 from other information being submitted. Documents shall be clearly and prominently marked on  
17 their face with the legend: “[SUPPLIER’S NAME] CONFIDENTIAL BUSINESS  
18 INFORMATION, SUBJECT TO PROTECTIVE ORDER” or a comparable notice. During the  
19 pre-trial phase of this action, such information, whether submitted in writing or in oral testimony,  
20 shall be disclosed only *in camera* before the Court and shall be filed only under seal, pursuant to  
21 Rule 5(g) of the Local Civil Rules of the United States District Court for the Western District of  
22 Washington.

23 (b) The Court may determine that information alleged to be confidential is not  
24 confidential, or that its disclosure is necessary for the proper disposition of the proceeding before,  
25 during, or after the close of the action herein. If such a determination is made by the Court,  
26 opportunity shall be provided to the supplier of such information to argue its confidentiality prior  
27 to the time of such ruling.

1           3.       In the absence of written permission from the supplier or an order from the Court,  
2 any confidential documents or business information submitted in accordance with the provisions  
3 of paragraph 2 above shall not be disclosed to any person other than:

4               (i)       outside counsel for parties to this action, including necessary secretarial and  
5 support personnel assisting such counsel;

6               (ii)      qualified persons taking testimony involving such documents or  
7 information and necessary stenographic and clerical personnel thereof;

8               (iii)     technical experts and their staff who are employed for the purposes of this  
9 litigation;

10              (iv)     T. Andrew Culbert (for Microsoft) and K. McNeill Taylor (for Motorola);

11              (v)      Up to two additional in-house attorneys for any party conducting a mock  
12 jury exercise, the disclosure of Confidential Business Information to such individuals  
13 being limited to only that Confidential Business Information disclosed during and as part  
14 of the mock jury exercise;

15              (vi)     the Court;

16              (vii)    Non-technical jury or trial consulting services; and

17              (viii)   mock jurors.

18           4.       Confidential Business Information submitted in accordance with the provisions of  
19 paragraph 2 above shall not be made available to any person designated in paragraphs 3(iii)- (v)  
20 and (vii) unless he or she shall have first read this order and shall have signed a writing  
21 substantially provided as Attachment A hereto, a copy of which shall be provided to both parties,  
22 manifesting agreement:

23              (i)       to be bound by the terms thereof;

24              (ii)      not to reveal such Confidential Business Information to anyone other than  
25 another person designated in paragraph 3; and

26              (iii)     to utilize such Confidential Business Information solely for purposes of this  
27 action.

1 For persons designated in paragraphs 3(iii)-(v), a copy of the signed Attachment A shall be  
2 provided to both parties. Confidential Business Information submitted in accordance with the  
3 provisions of paragraph 2 above shall not be made available to any person designated in paragraph  
4 3(viii) unless he or she shall have first signed a confidentiality agreement confirming that they will  
5 not disclose any such information or use it for any purpose other than for the present case.

6         5. If the Court orders, or if the supplier and all parties to the action agree, that access  
7 to or dissemination of information submitted as Confidential Business Information shall be made  
8 to persons not included in paragraph 3 above, such matter shall only be accessible to or  
9 disseminated to such persons based upon the conditions pertaining to, and obligations arising from  
10 this order, and such persons shall be considered subject to it, unless the Court finds that the  
11 information is not Confidential Business Information as defined in paragraph 1 hereof

12         6. In addition to the persons included in paragraph 3 above, Confidential Business  
13 Information contained in responses to interrogatories, answers to requests for admission,  
14 submissions to the Court, expert reports (exclusive of exhibits and source code excerpts), opinions  
15 and orders of the Court may be accessible to or disseminated to the following two in-house  
16 counsel, who are members of at least one state bar in good standing, with direct responsibility for  
17 managing this litigation:

18                 (a) for Motorola, Tom Miller and Richard A. Wulff

19                 (b) for Microsoft, David E. Killough.

20 provided that (1) Confidential Business Information pertaining to licensing or other commercially  
21 sensitive financial information shall not be made available under this paragraph 6 to such  
22 designated in-house counsel; the supplier shall designate such Confidential Business Information  
23 pertaining to licensing or other commercially sensitive financial information as “[SUPPLIER’S  
24 NAME] CONFIDENTIAL FINANCIAL INFORMATION — OUTSIDE ATTORNEYS’ EYES  
25 ONLY — SUBJECT TO PROTECTIVE ORDER” and promptly provide a redacted version of  
26 such document that may be disseminated to the in-house counsel designated under this paragraph  
27 6; and (2) such in-house counsel shall have first read this order and shall have signed a writing  
28

1 substantially provided as Attachment A hereto, a copy of which shall be provided to both parties,  
2 manifesting agreement:

3 (i) to be bound by the terms thereof;

4 (ii) not to reveal such Confidential Business Information to anyone other than  
5 another person designated in paragraph 3; and

6 (iii) to utilize such Confidential Business Information solely for purposes of this  
7 action.

8 7. Subject to the restrictions of paragraph 6 above, the two in-house counsel  
9 designated therein shall not be excluded from any confidential portion of the trial or other in-  
10 Court proceedings in this case.

11 8. Any Confidential Business Information submitted to the Court in connection with a  
12 motion or other proceeding within the purview of this action shall be submitted under seal  
13 pursuant to paragraph 2 above. Any portion of a transcript in connection with this action  
14 containing any Confidential Business Information submitted pursuant to paragraph 2 above shall  
15 be bound separately and filed under seal. When any Confidential Business Information submitted  
16 in accordance with paragraph 2 above is included in an authorized transcript of a deposition or  
17 exhibits thereto, arrangements shall be made with the court reporter taking the deposition to bind  
18 such confidential portions and separately label them [SUPPLIER'S NAME], CONFIDENTIAL  
19 BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER. Before a court reporter  
20 receives any such information, he or she shall have first read this order and shall have agreed in  
21 writing to be bound by the terms thereof Alternatively, he or she shall sign the agreement included  
22 as Attachment B hereto. Copies of each such signed agreement shall be provided to the supplier  
23 of such Confidential Business Information.

24 9. The restrictions upon, and obligations accruing to, persons who become subject to  
25 this order shall not apply to any information submitted in accordance with paragraph 2 above to  
26 which the person asserting the confidential status thereof agrees in writing, or the Court rules after  
27 an opportunity for hearing, that the information was publicly known at the time it was supplied to  
28 the receiving party or has since become publicly known through no fault of the receiving party.

1           10.     If while this action is before the Court, a party to this order who is to be a recipient  
2 of any business information designated as confidential and submitted in accordance with  
3 paragraph 2 disagrees with respect to such a designation, in full or in part, it shall notify the  
4 supplier in writing and they will thereupon confer as to the status of the subject information  
5 proffered within the context of this order. If prior to or at the time of such a conference, the  
6 supplier withdraws its designation of such information as being subject to this order, but  
7 nonetheless submits such information for purposes of the action, such supplier shall express the  
8 withdrawal in writing, and serve such withdrawal upon all parties. If the recipient and supplier are  
9 unable to concur upon the status of the subject information submitted as Confidential Business  
10 Information within ten days from the date of notification of such disagreement, any party to this  
11 order may raise the issue of the designation of such a status to the Court who will rule upon the  
12 matter. The Court may *sua sponte* question the designation of the confidential status of any  
13 information and, after opportunity for hearing, may remove the confidentiality designation.

14           11.     No less than 10 days (or any other period of time designated by the Court) prior to  
15 the initial disclosure to a proposed expert of any confidential information submitted in accordance  
16 with paragraph 2, the party proposing to use such expert shall submit in writing the name of such  
17 proposed expert and his or her educational and employment history to the supplier. If the supplier  
18 objects to the disclosure of such Confidential Business Information to such proposed expert as  
19 inconsistent with the language or intent of this order or on other grounds, it shall notify the  
20 recipient in writing of its objection and the grounds therefor prior to the initial disclosure. If the  
21 dispute is not resolved on an informal basis within ten days of receipt of such notice of objection,  
22 the supplier shall submit immediately each objection to the Court for a ruling. The submission of  
23 such Confidential Business Information to such proposed expert shall be withheld pending the  
24 ruling of the Court.

25           12.     If Confidential Business Information submitted in accordance with paragraph 2 is  
26 disclosed to any person other than in the manner authorized by this protective order, the party  
27 responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure  
28 to the attention of the supplier and the Court and, without prejudice to other rights and remedies of

1 the supplier, make every effort to prevent further disclosure by it or by the person who was the  
2 recipient of such information.

3 13. Nothing in this order shall abridge the right of any person to seek judicial review or  
4 to pursue other appropriate judicial action with respect to any ruling made by the Court concerning  
5 the issue of the status of Confidential Business Information.

6 14. Upon final termination of this action, each party that is subject to this order shall  
7 assemble and return to the supplier all items containing Confidential Business Information  
8 submitted in accordance with paragraph 2 above, including all copies of such matter which may  
9 have been made. Alternatively, the parties subject to this order may, with the written consent of  
10 the supplier, destroy all items containing Confidential Business Information and certify to the  
11 supplier (or his counsel) that such destruction has taken place.

12 15. If any Confidential Business Information which is supplied in accordance with  
13 paragraph 2 above is supplied by a nonparty to this action, such a nonparty shall be considered a  
14 "supplier" as that term is used in the context of this order.

15 16. Each nonparty supplier shall be provided a copy of this order by the party seeking  
16 information from said supplier.

17 17. The inadvertent production of any document or information (whether designated as  
18 Confidential Business Information or not) shall not be deemed to waive any attorney-client  
19 privilege, work product protection, or other privilege or immunity that would otherwise attach to  
20 the document or information produced, or to other documents or information, so long as the  
21 procedures of paragraphs 18 and 19 below are followed.

22 18. If a producing party or person discovers that a privileged, protected, or otherwise  
23 immune document or information has been produced, the party or person must, promptly after  
24 discovery, notify all other party or parties of the claim of privilege or other protection or  
25 immunity. Upon such notice, each other party shall use its best efforts to retrieve the original and  
26 all copies of the identified document or information of which the party is aware, shall promptly  
27 destroy all such copies of the identified document or information, and shall notify the producing  
28 party in writing that it has done so within ten (10) calendar days of receiving such notice. Such

1 destruction shall not constitute an acknowledgement that the identified document or information  
2 is, in fact, privileged or entitled to protection or immunity and shall not preclude any party from  
3 later moving the Court to compel the production of the identified document or information.

4 Within a reasonable time after notifying the other party or parties of a claim of privilege or other  
5 protection or immunity, the Producing Party shall provide a privilege log for those materials.

6 19. If a receiving party receives any document or information that appears to be subject  
7 to an attorney-client privilege, work product protection, or other privilege or immunity that would  
8 otherwise attach to the document or information, and where it is reasonably apparent that the  
9 document or information was provided or made available through inadvertence, the receiving  
10 party must refrain from examining the document or information any more than is essential to  
11 ascertain whether the document or information is likely privileged, protected, or otherwise  
12 immune, and shall immediately notify the producing party in writing that the receiving party  
13 possesses material that appears to be privileged, protected, or otherwise immune. The procedures  
14 of paragraph 18 shall then apply.

15 20. The parties have agreed to follow the provisions of Fed. R. Civ. P. 26(b)(4)(B)-(D),  
16 as amended effective December 1, 2010, with respect to the protection of draft expert reports and  
17 communications between a party's attorney(s) and an expert(s). In addition, the parties have  
18 agreed that notes taken by the parties' experts in the course of the preparation of their reports,  
19 drafts of the expert reports, and all communications between counsel for the parties and their  
20 experts (including, but not limited to, emails and other written correspondence) (all of the  
21 foregoing hereinafter referred to as "Expert Work Product") need not be retained and shall be not  
22 produced in this or any other action. Expert Work Product shall not include communications,  
23 information and things that are relied upon by the expert in his or her opinions, or which otherwise  
24 form the basis of the expert's report. Neither the terms of this paragraph nor the parties'  
25 agreement to them implies that any of the information restricted from discovery in this paragraph  
26 would otherwise be discoverable.

27 21. Confidential Source Code shall mean human-readable programming language text  
28 that defines software, firmware, or electronic hardware descriptions. Confidential Source Code



1 includes, without limitation, computer code; scripts; assembly; object code; source code listings  
2 and descriptions of source code; object code listings and descriptions of object code; Hardware  
3 Description Language (HDL); Register Transfer Level (RTL) files that describe the hardware  
4 design of any ASIC or other chip; similarly sensitive implementation details; files containing text  
5 written in “C,” “C++,” assembler, VHDL, Verilog, and digital signal processor (DSP)  
6 programming languages; “.include files;” “make” files; link files; and other human- readable text  
7 files used in the generation and/or building of software directly executed on a microprocessor,  
8 microcontroller, or DSP. Confidential Source Code is a form of, and shall be afforded all of the  
9 same protections as, Confidential Business Information as defined in paragraph 1 hereto unless  
10 otherwise provided in paragraphs 21 to 26. The restrictions herein on Confidential Source Code  
11 do not apply to publicly-available source code available as open source code.

12       22. To the extent that a party wishes to obtain access to Confidential Source Code, the  
13 following procedures may apply at the option of the supplier. Nothing in this Order shall be  
14 construed as a representation or admission by a party that Confidential Source Code is properly  
15 discoverable in this action, or to obligate any party to produce Confidential Source Code.

16       23. Documents or things that comprise a party’s confidential, proprietary and/or trade  
17 secret source code or object code may be designated CONFIDENTIAL SOURCE CODE.  
18 Documents or things that include or are accompanied by confidential, proprietary and/or trade  
19 secret source code or object code may be designated CONFIDENTIAL SOURCE CODE only if  
20 such confidential, proprietary and/or trade secret source code or object code cannot reasonably be  
21 segregated from the document or thing. The following conditions shall govern the production,  
22 review and use of documents or things designated CONFIDENTIAL SOURCE CODE.

23       24. All information designated as CONFIDENTIAL SOURCE CODE shall be subject  
24 to the following provisions:

25               (i) Subject to the following notice provisions and each producing party’s  
26 written objections, each producing party shall make its responsive CONFIDENTIAL  
27 SOURCE CODE continuously available for inspection during discovery and through the  
28 conclusion of the trial in this action. Any single reviewing session (conducted during one



1 business day or during consecutive business days of review) shall be conducted during  
2 regular business hours (9:00 A.M. to 6:00 P.M. local time) on four (4) calendar days'  
3 written (including email) notice, or during such other hours as may be mutually and  
4 reasonably agreed upon on reasonable notice.

5 (ii) A list of names of persons who will view the source code will be provided  
6 to the producing party in conjunction with the written notice requesting inspection. The  
7 receiving party shall maintain a daily log of the names of persons who enter the source  
8 code viewing room (see paragraph 24(iv) below) to view the source code and note on the  
9 log when these persons enter and depart. The producing party shall be entitled to have a  
10 person observe all entrances and exits from the source code viewing room, and to receive a  
11 copy of the log, but shall not otherwise be entitled to observe the receiving party's  
12 inspection.

13 (iii) All source code produced pursuant to these provisions will be made  
14 available by the producing party at the following locations:

- 15 • By Motorola, at the offices of Ropes & Gray LLP, 111 South Wacker Drive, 46th  
16 Floor, Chicago, Illinois 60606;
- 17 • By Microsoft, at the offices of Sidley Austin LLP, 1501 K Street NW, Washington,  
18 DC 20005; and
- 19 • By third parties, at such location(s) as may be mutually agreed to by the producing  
20 third party and the requesting party, or as otherwise ordered by the Court.

21 (iv) All source code will be made available in a private room, on a secured  
22 computer without Internet access or network access to other computers, as necessary and  
23 appropriate to prevent and protect against any unauthorized copying, transmission,  
24 removal, or other transfer of any source code outside or away from the computer on which  
25 the source code is provided for inspection (the "Source Code Computer"). The producing  
26 party shall be obligated to install such reasonable tools or programs necessary to review  
27 and search the code produced on the platform produced, as specified by the receiving  
28 party, which the receiving party may provide if the producing party does not have. For  
example, prior to the date of the inspection, a text editor or IDE capable of performing

1 syntax highlighting should be installed on the Source Code Computer. The producing  
2 party shall not be obligated to install tools or programs capable of compiling and running  
3 source code. To the extent the receiving party provides the producing party with tools or  
4 programs to install for use during a reviewing session, any such tools or programs must be  
5 provided no later than five (5) business days in advance of the first reviewing session for  
6 which such installation is desired. Thereafter, such tools or programs shall remain on the  
7 Source Code Computer throughout the discovery period, absent agreement to the contrary.

8 (v) The receiving party's outside counsel and/or technical advisers shall be  
9 entitled to take notes relating to the source code but may not copy the source code into the  
10 notes. Such notes shall be subject to the provisions of paragraph 24(x) below. No copies  
11 of all or any portion of the source code may leave the room in which the source code is  
12 inspected. Furthermore, no other written or electronic record of the source code is  
13 permitted except as otherwise provided herein.

14 (vi) During inspection of the code, the receiving party may compile a list of  
15 source code files to be produced. The receiving party will only identify such files as are  
16 reasonably necessary to facilitate the receiving party's preparation of the case, including  
17 (1) when reasonably necessary to prepare any filing with the Court or to serve any  
18 pleadings or other papers on any other party, (2) to prepare internal attorney work product  
19 materials, (3) or to prepare other necessary case materials such as testifying expert reports,  
20 consulting expert written analyses, and related drafts and correspondences. In no event  
21 may the receiving party identify more than those files necessary to analyze the issues in  
22 this case during the duration of the case without prior written approval by the producing  
23 party. Upon identification of such files by the receiving party, the producing party shall  
24 print, append production numbers to, and label such files with the file's complete file path  
25 (*e.g.*, ./product1/source/main/test/test.h) and the designation CONFIDENTIAL SOURCE  
26 CODE. If the producing party objects that identified files are not reasonably necessary to  
27 any case preparation activity, the producing party shall make such objection known to the  
28 receiving party within five (5) business days of the identification of any files by the

1 receiving party. If, after meeting and conferring, the producing party and the receiving  
2 party cannot resolve the objection, the producing party shall be entitled to seek a judicial  
3 resolution of whether or not the identified source code in question is reasonably necessary  
4 to any case preparation activity. In the absence of any objection, or upon resolution of any  
5 such dispute by the Court, the producing party shall provide one printed copy of the  
6 identified files to the receiving party within five (5) business days of the identification of  
7 such files by the receiving party or, if applicable, resolution of a dispute by the Court. The  
8 printed pages shall constitute part of the source code produced by the producing party in  
9 this action.

10 (vii) Unless otherwise agreed in advance by the parties in writing, following  
11 each reviewing session (conducted during one business day or during consecutive business  
12 days of review), the receiving party's outside counsel and/or technical advisers shall  
13 remove all notes, documents, laptops, and all other materials from the room that may  
14 contain work product and/or attorney-client privileged information. The producing party  
15 shall not be responsible for any items left in the room following each inspection session.

16 (viii) The receiving party will not copy, remove, or otherwise transfer any source  
17 code from the Source Code Computer including, without limitation, copying, removing, or  
18 transferring the source code onto any other computers or peripheral equipment. The  
19 receiving party will not transmit any source code in any way from the producing party's  
20 facilities or the offices of its outside counsel of record.

21 (ix) Documents designated CONFIDENTIAL SOURCE CODE may only be  
22 viewed by or disclosed to outside counsel or the receiving party's technical advisers  
23 approved by the producing party and their necessary support personnel. The term  
24 "technical adviser" shall mean an independent, outside expert witness or consultant with  
25 whom counsel may deem it appropriate to consult, subject to the following provision.  
26 Documents designated CONFIDENTIAL SOURCE CODE may not be disclosed to in-  
27 house counsel.

1 (x) A party desiring to disclose information to a technical adviser shall give  
2 prior written notice to the producing party or non-party, who shall have ten (10) business  
3 days after such notice is given to object in writing. A party desiring to disclose  
4 CONFIDENTIAL SOURCE CODE information to a technical adviser must provide the  
5 following information for each technical adviser: (i) name, address, curriculum vitae,  
6 current employer, and employment (including consulting) history for the past four (4)  
7 years; and (ii) a listing of cases in which the witness has testified as an expert at trial or by  
8 deposition within the preceding four years. No CONFIDENTIAL SOURCE CODE  
9 information shall be disclosed to such expert(s) or consultant(s) until after the expiration of  
10 the foregoing notice period.

11 (xi) The outside counsel and technical advisers (who have been approved to  
12 access source code under paragraphs 24(ix) and 24(x) above) for a receiving party shall  
13 maintain and store any paper copies of the source code or notes related to such source code  
14 (as referenced in paragraphs 24(v) and 24(vi)) at their offices in a manner that prevents  
15 duplication of or unauthorized access to the source code or notes, including, without  
16 limitation, storing the source code or notes in a locked room or cabinet at all times when  
17 those materials are not in use;

18 (xii) The receiving party's outside counsel of record may make no more than  
19 five additional paper copies of any portions of the source code files identified pursuant to  
20 paragraph 24(vi), not including copies attached to court filings, and shall maintain a log of  
21 all copies of the source code (received from a producing party) that are provided by the  
22 receiving party to any qualified person. The log shall include the names of the recipients  
23 and reviewers of copies and locations where the copies are stored. Any paper copies of  
24 source code shall be designated CONFIDENTIAL SOURCE CODE — and shall be stored  
25 or viewed only at (1) the offices of outside counsel for the receiving party, (2) the offices  
26 of technical advisers who have been approved to access source code under paragraphs  
27 24(ix) and 24(x), (3) the site where any deposition is taken, (4) the Court, or (5) any  
28 intermediate location necessary to transport the information to a hearing, trial, or

1 deposition. Any such paper copies shall be maintained at all times in a locked and secure  
2 location. The producing party shall not unreasonably deny a receiving party's request to  
3 make (and log) additional copies, providing that the request is for good cause and for use  
4 that otherwise complies with this order. The producing party shall be entitled to a copy of  
5 the log upon request, and at the conclusion of the litigation.

6 (xiii) The receiving party may include excerpts of source code in a pleading,  
7 exhibit, expert report, discovery document, deposition transcript, other Court document, or  
8 any drafts of these documents ("Source Code Documents"). The receiving party shall only  
9 include such excerpts as are reasonably necessary for the purposes for which such part of  
10 the source code is used — as an example, excerpts of approximately 25 to 40 lines in  
11 length are presumptively reasonable.

12 (xiv) To the extent portions of source code are quoted in a Source Code  
13 Document, either (1) the entire document will be stamped CONFIDENTIAL SOURCE  
14 CODE or (2) those pages containing quoted source code will be separately bound, and  
15 stamped as CONFIDENTIAL SOURCE CODE. All Source Code Documents shall also be  
16 marked with the legend "CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO  
17 PROTECTIVE ORDER," or a comparable notice, and shall be treated as Confidential  
18 Business Information pursuant to this Protective Order.

19 (xv) All paper copies of source code shall be securely destroyed if they are no  
20 longer necessary in the litigation (*e.g.*, extra copies at the conclusion of a deposition).  
21 Copies of source code that are marked as deposition exhibits shall not be provided to the  
22 court reporter or attached to deposition transcripts; rather, the deposition record will  
23 identify the exhibit by its production numbers.

24 (xvi) The receiving party may not create electronic images, or any other images,  
25 of the source code from the paper copy for use on a computer (*e.g.*, may not scan the  
26 source code to a PDF, or photograph the code). The receiving party may create an  
27 electronic copy or image of selected portions of the source code only when reasonably  
28 necessary to accomplish any filing with the Court or to serve any pleadings or other papers

1 on any other party (including expert reports). Images or copies of source code shall not be  
2 included in correspondence between the parties (references to production numbers shall be  
3 used instead) and shall be omitted from pleadings and other papers except to the extent  
4 permitted herein.

5 25. Unless otherwise ordered by the Court, Confidential Source Code designated as  
6 “CONFIDENTIAL SOURCE CODE” shall be subject to the provisions set forth in paragraphs 21  
7 to 26 and may be disclosed, subject to paragraphs 21 to 26, solely to:

8 (a) outside counsel representing the parties to this action, as defined in  
9 paragraph 3(i), including necessary secretarial and support personnel regularly employed by and  
10 assisting such counsel, except that, unless otherwise agreed, no outside counsel who is involved in  
11 competitive decision-making, as defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3  
12 (Fed. Cir. 1984), shall have access to Confidential Source Code designated as “CONFIDENTIAL  
13 SOURCE CODE;”

14 (b) any outside expert or consultant retained by a party for the purposes of this  
15 action and who satisfies paragraph 3(iii) of this Order, provided that disclosure is only to the  
16 extent necessary to perform such work; and provided that:

17 (i) such expert or consultant has agreed to be bound by the provisions  
18 of this Order as required by paragraphs 3, 4, and 11 of this Order,

19 (ii) such expert or consultant is not involved in competitive decision-  
20 making, as defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed.  
21 Cir. 1984), on behalf of a party or a competitor of a party in the technical subject  
22 matter of the Confidential Business Information produced, and

23 (iii) no unresolved objections to such disclosure exist after proper notice  
24 has been given to all parties as set forth in paragraphs 3, 4, and 11 of this Order;

25 (c) court reporters, stenographers, and videographers retained to record  
26 testimony taken in this action, provided that such court reporters, stenographers, and  
27 videographers have agreed to be bound by the provisions of this Order as required by paragraph 4  
28 of this Order;

- 1 (d) the Court;
- 2 (e) any persons who are witnesses during a deposition, court hearing, or trial
- 3 where specific documentary or testimonial evidence establishes at that time that the Confidential
- 4 Source Code or portion of the Confidential Source Code was authored or received by the witness
- 5 without any violation of any confidentiality obligation owed to any party in this action;
- 6 (f) any mediator who is assigned to hear this matter, and his or her staff,
- 7 subject to their agreement to maintain confidentiality to the same degree as required by this Order;
- 8 (g) any other person with the prior written consent of the supplier.

9 26. Access to and review of the Confidential Source Code shall be strictly for the

10 purpose of investigating the claims and defenses at issue in this action. No person shall review or

11 analyze any Confidential Source Code for purposes unrelated to this action, nor may any person

12 use any knowledge gained as a result of reviewing Confidential Source Code in this action in any

13 other pending or future dispute, proceeding, patent prosecution, or litigation.

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**AGREED AND STIPULATED TO:**

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***Attorneys for Defendants Motorola Solutions,  
Inc., Motorola Mobility, Inc.***

**ORDER**

As stipulated above, IT IS SO ORDERED.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
THE HONORABLE JAMES L. ROBART

**Attachment A**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION, a  
Washington corporation,

Plaintiff,

vs.

MOTOROLA, INC., MOTOROLA  
MOBILITY, INC., and GENERAL  
INSTRUMENT CORPORATION;

Defendants

Case No. 10-1823

**PROTECTIVE ORDER REGARDING  
THE DISCLOSURE AND USE OF  
DISCOVERY MATERIALS**

**CONFIDENTIALITY AGREEMENT  
PURSUANT TO PROTECTIVE ORDER**

I, \_\_\_\_\_, hereby certify that I have read the Protective Order Regarding the Disclosure and Use of Discovery Materials (the “Order”) in the above-captioned case, that I agree to comply with the Order in all respects, and that I hereby submit and waive any objection to the jurisdiction of the United States District Court for the Western District of Washington for the adjudication of any dispute concerning or related to my compliance with the Order.

I understand and agree, in particular, that any Confidential Business Information and any copies, excerpts, or summaries thereof, as well as any knowledge or information derived from any of the aforementioned items, may be used solely for purposes of this litigation and may not be used for any other purpose, including without limitation, and business, commercial or academic purpose.

1 I further understand and agree that failure to abide fully by the terms of the Order may  
2 result in legal action against me, including being held in contempt of court and liability for  
3 monetary damages.

4  
5 Signature:\_\_\_\_\_

6 Please print or type the following:

7 Name:\_\_\_\_\_

8 Title and Affiliation:\_\_\_\_\_

9 Address:\_\_\_\_\_

10 Telephone:\_\_\_\_\_

**Attachment B**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION, a  
Washington corporation,

Plaintiff,

vs.

MOTOROLA, INC., MOTOROLA  
MOBILITY, INC., and GENERAL  
INSTRUMENT CORPORATION;

Defendants

Case No. 10-1823

**PROTECTIVE ORDER REGARDING  
THE DISCLOSURE AND USE OF  
DISCOVERY MATERIALS**

**NONDISCLOSURE AGREEMENT FOR  
REPORTER/STENOGRAPHER/TRANSLATOR**

I, \_\_\_\_\_, do solemnly swear or affirm that I will not divulge any information communicated to me in any confidential portion of the action or hearing in *Microsoft Corporation v. Motorola, Inc., Motorola Mobility, Inc., and General Instrument Corporation*, Civil Action No. 10-1823, except as permitted in the protective order issued in this case. I will not directly or indirectly use or allow the use of such information for any purpose other than that directly associated with my official duties in this case.

Further, I will not by direct action, discussion, recommendation, or suggestion to any person reveal the nature or content of any information communicated during any confidential portion of the action or hearing in this case.

1 I also affirm that I do not hold any position or official relationship with any of the  
2 participants in said action.

3 Signed \_\_\_\_\_

4 Dated \_\_\_\_\_

5 Firm or Affiliation \_\_\_\_\_

# EXHIBIT B

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION, a  
Washington corporation,

Plaintiff,

vs.

MOTOROLA, INC., MOTOROLA  
MOBILITY LLC, and GENERAL  
INSTRUMENT CORPORATION,

Defendants.

CASE NO. C10-1823-JLR

**SECOND AMENDED PROTECTIVE  
ORDER REGARDING THE  
DISCLOSURE AND USE OF  
DISCOVERY MATERIALS**



1 Microsoft Corporation ("Microsoft") and Motorola, Inc., Motorola Mobility, Inc., and  
2 General Instrument Corporation (collectively "Motorola") hereby stipulate that this protective  
3 order should be entered and will govern the conduct of discovery in this case.

4 1. Confidential Business Information is information which has not been made public  
5 and which concerns or relates to the trade secrets, processes, operations, style of work, or  
6 apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers,  
7 inventories, amount or source of any income, profits, losses, or expenditures of any person, firm,  
8 partnership, corporation, or other organization, the disclosure of which information is likely to  
9 have the effect of causing substantial harm to the competitive position of the person, firm,  
10 partnership, corporation, or other organization from which the information was obtained, unless  
11 the Court is required by law to disclose such information.

12 2. (a) Any information submitted in pre-trial discovery or in a pleading, motion,  
13 or response to a motion in this action, either voluntarily or pursuant to order, and which is asserted  
14 by a supplier to contain or constitute Confidential Business Information shall be so designated by  
15 such supplier in writing, or orally at a deposition, conference, or hearing, and shall be segregated  
16 from other information being submitted. Documents shall be clearly and prominently marked on  
17 their face with the legend: "[SUPPLIER'S NAME] CONFIDENTIAL BUSINESS  
18 INFORMATION, SUBJECT TO PROTECTIVE ORDER" or a comparable notice. During the  
19 pre-trial phase of this action, such information, whether submitted in writing or in oral testimony,  
20 shall be disclosed only *in camera* before the Court and shall be filed only under seal, pursuant to  
21 Rule 5(g) of the Local Civil Rules of the United States District Court for the Western District of  
22 Washington.

23 (b) The Court may determine that information alleged to be confidential is not  
24 confidential, or that its disclosure is necessary for the proper disposition of the proceeding before,  
25 during, or after the close of the action herein. If such a determination is made by the Court,  
26 opportunity shall be provided to the supplier of such information to argue its confidentiality prior  
27 to the time of such ruling.

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1           3. In the absence of written permission from the supplier or an order from the Court,  
 2 any confidential documents or business information submitted in accordance with the provisions  
 3 of paragraph 2 above shall not be disclosed to any person other than:

4           (i) outside counsel for parties to this action, including necessary secretarial and  
 5 support personnel assisting such counsel;

6           (ii) qualified persons taking testimony involving such documents or  
 7 information and necessary stenographic and clerical personnel thereof;

8           (iii) technical experts and their staff who are employed for the purposes of this  
 9 litigation;

10          (iv) T. Andrew Culbert (for Microsoft) and K. McNeill Taylor (for Motorola);

11 ~~and~~

12 ~~the Court;~~

13          (v) Up to two additional in-house attorneys for any party conducting a mock  
 14 jury exercise, the disclosure of Confidential Business Information to such individuals  
 15 being limited to only that Confidential Business Information disclosed during and as part  
 16 of the mock jury exercise;

17          (vi) ~~the Court;~~

18          (vii) Non-technical jury or trial consulting services; and

19          (viii) -mock jurors.

20          4. Confidential Business Information submitted in accordance with the provisions of  
 21 paragraph 2 above shall not be made available to any person designated in paragraphs 3(iii)- ~~(iv)~~  
 22 ~~and (vii)~~ unless he or she shall have first read this order and shall have signed a writing  
 23 substantially provided as Attachment A hereto, a copy of which shall be provided to both parties,  
 24 manifesting agreement:

25           (i) to be bound by the terms thereof;

26           (ii) not to reveal such Confidential Business Information to anyone other than  
 27 another person designated in paragraph 3; and  
 28

(iii) to utilize such Confidential Business Information solely for purposes of this action.

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~~(iii)~~ For persons designated in paragraphs 3(iii)-(iv), a copy of the signed Attachment A shall be provided to both parties. Confidential Business Information submitted in accordance with the provisions of paragraph 2 above shall not be made available to any person designated in paragraph 3(viii) unless he or she shall have first signed a confidentiality agreement confirming that they will not disclose any such information or use it for any purpose other than for the present case.

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5. If the Court orders, or if the supplier and all parties to the action agree, that access to or dissemination of information submitted as Confidential Business Information shall be made to persons not included in paragraph 3 above, such matter shall only be accessible to or disseminated to such persons based upon the conditions pertaining to, and obligations arising from this order, and such persons shall be considered subject to it, unless the Court finds that the information is not Confidential Business Information as defined in paragraph 1 hereof

6. In addition to the persons included in paragraph 3 above, Confidential Business Information contained in responses to interrogatories, answers to requests for admission, submissions to the Court, expert reports (exclusive of exhibits and source code excerpts), opinions and orders of the Court may be accessible to or disseminated to the following two in-house counsel, who are members of at least one state bar in good standing, with direct responsibility for managing this litigation:

(a) for Motorola, Tom Miller and Richard A. Wulff

(b) for Microsoft, David E. Killough.

provided that (1) Confidential Business Information pertaining to licensing or other commercially sensitive financial information shall not be made available under this paragraph 6 to such designated in-house counsel; the supplier shall designate such Confidential Business Information pertaining to licensing or other commercially sensitive financial information as “[SUPPLIER’S NAME] CONFIDENTIAL FINANCIAL INFORMATION — OUTSIDE ATTORNEYS’ EYES ONLY — SUBJECT TO PROTECTIVE ORDER” and promptly provide a redacted version of such document that may be disseminated to the in-house counsel designated under this paragraph

1 6; and (2) such in-house counsel shall have first read this order and shall have signed a writing  
 2 substantially provided as Attachment A hereto, a copy of which shall be provided to both parties,  
 3 manifesting agreement:

- 4 (i) to be bound by the terms thereof;
- 5 (ii) not to reveal such Confidential Business Information to anyone other than  
 6 another person designated in paragraph 3; and
- 7 (iii) to utilize such Confidential Business Information solely for purposes of this  
 8 action.

9 7. Subject to the restrictions of paragraph 6 above, the two in-house counsel  
 10 designated therein shall not be excluded from any confidential portion of the trial or other in-  
 11 Court proceedings in this case.

12 8. Any Confidential Business Information submitted to the Court in connection with a  
 13 motion or other proceeding within the purview of this action shall be submitted under seal  
 14 pursuant to paragraph 2 above. Any portion of a transcript in connection with this action  
 15 containing any Confidential Business Information submitted pursuant to paragraph 2 above shall  
 16 be bound separately and filed under seal. When any Confidential Business Information submitted  
 17 in accordance with paragraph 2 above is included in an authorized transcript of a deposition or  
 18 exhibits thereto, arrangements shall be made with the court reporter taking the deposition to bind  
 19 such confidential portions and separately label them [SUPPLIER'S NAME], CONFIDENTIAL  
 20 BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER. Before a court reporter  
 21 receives any such information, he or she shall have first read this order and shall have agreed in  
 22 writing to be bound by the terms thereof Alternatively, he or she shall sign the agreement included  
 23 as Attachment B hereto. Copies of each such signed agreement shall be provided to the supplier  
 24 of such Confidential Business Information.

25 9. The restrictions upon, and obligations accruing to, persons who become subject to  
 26 this order shall not apply to any information submitted in accordance with paragraph 2 above to  
 27 which the person asserting the confidential status thereof agrees in writing, or the Court rules after  
 28

1 an opportunity for hearing, that the information was publicly known at the time it was supplied to  
2 the receiving party or has since become publicly known through no fault of the receiving party.

3 10. If while this action is before the Court, a party to this order who is to be a recipient  
4 of any business information designated as confidential and submitted in accordance with  
5 paragraph 2 disagrees with respect to such a designation, in full or in part, it shall notify the  
6 supplier in writing and they will thereupon confer as to the status of the subject information  
7 proffered within the context of this order. If prior to or at the time of such a conference, the  
8 supplier withdraws its designation of such information as being subject to this order, but  
9 nonetheless submits such information for purposes of the action, such supplier shall express the  
10 withdrawal in writing, and serve such withdrawal upon all parties. If the recipient and supplier are  
11 unable to concur upon the status of the subject information submitted as Confidential Business  
12 Information within ten days from the date of notification of such disagreement, any party to this  
13 order may raise the issue of the designation of such a status to the Court who will rule upon the  
14 matter. The Court may *sua sponte* question the designation of the confidential status of any  
15 information and, after opportunity for hearing, may remove the confidentiality designation.

16 11. No less than 10 days (or any other period of time designated by the Court) prior to  
17 the initial disclosure to a proposed expert of any confidential information submitted in accordance  
18 with paragraph 2, the party proposing to use such expert shall submit in writing the name of such  
19 proposed expert and his or her educational and employment history to the supplier. If the supplier  
20 objects to the disclosure of such Confidential Business Information to such proposed expert as  
21 inconsistent with the language or intent of this order or on other grounds, it shall notify the  
22 recipient in writing of its objection and the grounds therefor prior to the initial disclosure. If the  
23 dispute is not resolved on an informal basis within ten days of receipt of such notice of objection,  
24 the supplier shall submit immediately each objection to the Court for a ruling. The submission of  
25 such Confidential Business Information to such proposed expert shall be withheld pending the  
26 ruling of the Court.

27 12. If Confidential Business Information submitted in accordance with paragraph 2 is  
28 disclosed to any person other than in the manner authorized by this protective order, the party

1 responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure  
2 to the attention of the supplier and the Court and, without prejudice to other rights and remedies of  
3 the supplier, make every effort to prevent further disclosure by it or by the person who was the  
4 recipient of such information.

5 13. Nothing in this order shall abridge the right of any person to seek judicial review or  
6 to pursue other appropriate judicial action with respect to any ruling made by the Court concerning  
7 the issue of the status of Confidential Business Information.

8 14. Upon final termination of this action, each party that is subject to this order shall  
9 assemble and return to the supplier all items containing Confidential Business Information  
10 submitted in accordance with paragraph 2 above, including all copies of such matter which may  
11 have been made. Alternatively, the parties subject to this order may, with the written consent of  
12 the supplier, destroy all items containing Confidential Business Information and certify to the  
13 supplier (or his counsel) that such destruction has taken place.

14 15. If any Confidential Business Information which is supplied in accordance with  
15 paragraph 2 above is supplied by a nonparty to this action, such a nonparty shall be considered a  
16 "supplier" as that term is used in the context of this order.

17 16. Each nonparty supplier shall be provided a copy of this order by the party seeking  
18 information from said supplier.

19 17. The inadvertent production of any document or information (whether designated as  
20 Confidential Business Information or not) shall not be deemed to waive any attorney-client  
21 privilege, work product protection, or other privilege or immunity that would otherwise attach to  
22 the document or information produced, or to other documents or information, so long as the  
23 procedures of paragraphs 18 and 19 below are followed.

24 18. If a producing party or person discovers that a privileged, protected, or otherwise  
25 immune document or information has been produced, the party or person must, promptly after  
26 discovery, notify all other party or parties of the claim of privilege or other protection or  
27 immunity. Upon such notice, each other party shall use its best efforts to retrieve the original and  
28 all copies of the identified document or information of which the party is aware, shall promptly

1 destroy all such copies of the identified document or information, and shall notify the producing  
2 party in writing that it has done so within ten (10) calendar days of receiving such notice. Such  
3 destruction shall not constitute an acknowledgement that the identified document or information  
4 is, in fact, privileged or entitled to protection or immunity and shall not preclude any party from  
5 later moving the Court to compel the production of the identified document or information.  
6 Within a reasonable time after notifying the other party or parties of a claim of privilege or other  
7 protection or immunity, the Producing Party shall provide a privilege log for those materials.

8 19. If a receiving party receives any document or information that appears to be subject  
9 to an attorney-client privilege, work product protection, or other privilege or immunity that would  
10 otherwise attach to the document or information, and where it is reasonably apparent that the  
11 document or information was provided or made available through inadvertence, the receiving  
12 party must refrain from examining the document or information any more than is essential to  
13 ascertain whether the document or information is likely privileged, protected, or otherwise  
14 immune, and shall immediately notify the producing party in writing that the receiving party  
15 possesses material that appears to be privileged, protected, or otherwise immune. The procedures  
16 of paragraph 18 shall then apply.

17 20. The parties have agreed to follow the provisions of Fed. R. Civ. P. 26(b)(4)(B)-(D),  
18 as amended effective December 1, 2010, with respect to the protection of draft expert reports and  
19 communications between a party's attorney(s) and an expert(s). In addition, the parties have  
20 agreed that notes taken by the parties' experts in the course of the preparation of their reports,  
21 drafts of the expert reports, and all communications between counsel for the parties and their  
22 experts (including, but not limited to, emails and other written correspondence) (all of the  
23 foregoing hereinafter referred to as "Expert Work Product") need not be retained and shall be not  
24 produced in this or any other action. Expert Work Product shall not include communications,  
25 information and things that are relied upon by the expert in his or her opinions, or which otherwise  
26 form the basis of the expert's report. Neither the terms of this paragraph nor the parties'  
27 agreement to them implies that any of the information restricted from discovery in this paragraph  
28 would otherwise be discoverable.

1           21. Confidential Source Code shall mean human-readable programming language text  
2 that defines software, firmware, or electronic hardware descriptions. Confidential Source Code  
3 includes, without limitation, computer code; scripts; assembly; object code; source code listings  
4 and descriptions of source code; object code listings and descriptions of object code; Hardware  
5 Description Language (HDL); Register Transfer Level (RTL) files that describe the hardware  
6 design of any ASIC or other chip; similarly sensitive implementation details; files containing text  
7 written in "C," "C++," assembler, VHDL, Verilog, and digital signal processor (DSP)  
8 programming languages; ".include files;" "make" files; link files; and other human- readable text  
9 files used in the generation and/or building of software directly executed on a microprocessor,  
10 microcontroller, or DSP. Confidential Source Code is a form of, and shall be afforded all of the  
11 same protections as, Confidential Business Information as defined in paragraph 1 hereto unless  
12 otherwise provided in paragraphs 21 to 26. The restrictions herein on Confidential Source Code  
13 do not apply to publicly-available source code available as open source code.

14           22. To the extent that a party wishes to obtain access to Confidential Source Code, the  
15 following procedures may apply at the option of the supplier. Nothing in this Order shall be  
16 construed as a representation or admission by a party that Confidential Source Code is properly  
17 discoverable in this action, or to obligate any party to produce Confidential Source Code.

18           23. Documents or things that comprise a party's confidential, proprietary and/or trade  
19 secret source code or object code may be designated CONFIDENTIAL SOURCE CODE.  
20 Documents or things that include or are accompanied by confidential, proprietary and/or trade  
21 secret source code or object code may be designated CONFIDENTIAL SOURCE CODE only if  
22 such confidential, proprietary and/or trade secret source code or object code cannot reasonably be  
23 segregated from the document or thing. The following conditions shall govern the production,  
24 review and use of documents or things designated CONFIDENTIAL SOURCE CODE.

25           24. All information designated as CONFIDENTIAL SOURCE CODE shall be subject  
26 to the following provisions:

- 27                   (i) Subject to the following notice provisions and each producing party's  
28 written objections, each producing party shall make its responsive CONFIDENTIAL



1 SOURCE CODE continuously available for inspection during discovery and through the  
 2 conclusion of the trial in this action. Any single reviewing session (conducted during one  
 3 business day or during consecutive business days of review) shall be conducted during  
 4 regular business hours (9:00 A.M. to 6:00 P.M. local time) on four (4) calendar days'  
 5 written (including email) notice, or during such other hours as may be mutually and  
 6 reasonably agreed upon on reasonable notice.

7 (ii) A list of names of persons who will view the source code will be provided  
 8 to the producing party in conjunction with the written notice requesting inspection. The  
 9 receiving party shall maintain a daily log of the names of persons who enter the source  
 10 code viewing room (see paragraph 24(iv) below) to view the source code and note on the  
 11 log when these persons enter and depart. The producing party shall be entitled to have a  
 12 person observe all entrances and exits from the source code viewing room, and to receive a  
 13 copy of the log, but shall not otherwise be entitled to observe the receiving party's  
 14 inspection.

15 (iii) All source code produced pursuant to these provisions will be made  
 16 available by the producing party at the following locations:

- 17 • By Motorola, at the offices of Ropes & Gray LLP, 111 South Wacker Drive, 46th  
 18 Floor, Chicago, Illinois 60606;
- 19 • By Microsoft, at the offices of Sidley Austin LLP, 1501 K Street NW, Washington,  
 20 DC 20005; and
- 21 • By third parties, at such location(s) as may be mutually agreed to by the producing  
 22 third party and the requesting party, or as otherwise ordered by the Court.

23 (iv) All source code will be made available in a private room, on a secured  
 24 computer without Internet access or network access to other computers, as necessary and  
 25 appropriate to prevent and protect against any unauthorized copying, transmission,  
 26 removal, or other transfer of any source code outside or away from the computer on which  
 27 the source code is provided for inspection (the "Source Code Computer"). The producing  
 28 party shall be obligated to install such reasonable tools or programs necessary to review  
 and search the code produced on the platform produced, as specified by the receiving

1 party, which the receiving party may provide if the producing party does not have. For  
2 example, prior to the date of the inspection, a text editor or IDE capable of performing  
3 syntax highlighting should be installed on the Source Code Computer. The producing  
4 party shall not be obligated to install tools or programs capable of compiling and running  
5 source code. To the extent the receiving party provides the producing party with tools or  
6 programs to install for use during a reviewing session, any such tools or programs must be  
7 provided no later than five (5) business days in advance of the first reviewing session for  
8 which such installation is desired. Thereafter, such tools or programs shall remain on the  
9 Source Code Computer throughout the discovery period, absent agreement to the contrary.

10 (v) The receiving party's outside counsel and/or technical advisers shall be  
11 entitled to take notes relating to the source code but may not copy the source code into the  
12 notes. Such notes shall be subject to the provisions of paragraph 24(x) below. No copies  
13 of all or any portion of the source code may leave the room in which the source code is  
14 inspected. Furthermore, no other written or electronic record of the source code is  
15 permitted except as otherwise provided herein.

16 (vi) During inspection of the code, the receiving party may compile a list of  
17 source code files to be produced. The receiving party will only identify such files as are  
18 reasonably necessary to facilitate the receiving party's preparation of the case, including  
19 (1) when reasonably necessary to prepare any filing with the Court or to serve any  
20 pleadings or other papers on any other party, (2) to prepare internal attorney work product  
21 materials, (3) or to prepare other necessary case materials such as testifying expert reports,  
22 consulting expert written analyses, and related drafts and correspondences. In no event  
23 may the receiving party identify more than those files necessary to analyze the issues in  
24 this case during the duration of the case without prior written approval by the producing  
25 party. Upon identification of such files by the receiving party, the producing party shall  
26 print, append production numbers to, and label such files with the file's complete file path  
27 (e.g., ./product1/source/main/test/test.h) and the designation CONFIDENTIAL SOURCE  
28 CODE. If the producing party objects that identified files are not reasonably necessary to

1 any case preparation activity, the producing party shall make such objection known to the  
2 receiving party within five (5) business days of the identification of any files by the  
3 receiving party. If, after meeting and conferring, the producing party and the receiving  
4 party cannot resolve the objection, the producing party shall be entitled to seek a judicial  
5 resolution of whether or not the identified source code in question is reasonably necessary  
6 to any case preparation activity. In the absence of any objection, or upon resolution of any  
7 such dispute by the Court, the producing party shall provide one printed copy of the  
8 identified files to the receiving party within five (5) business days of the identification of  
9 such files by the receiving party or, if applicable, resolution of a dispute by the Court. The  
10 printed pages shall constitute part of the source code produced by the producing party in  
11 this action.

12 (vii) Unless otherwise agreed in advance by the parties in writing, following  
13 each reviewing session (conducted during one business day or during consecutive business  
14 days of review), the receiving party's outside counsel and/or technical advisers shall  
15 remove all notes, documents, laptops, and all other materials from the room that may  
16 contain work product and/or attorney-client privileged information. The producing party  
17 shall not be responsible for any items left in the room following each inspection session.

18 (viii) The receiving party will not copy, remove, or otherwise transfer any source  
19 code from the Source Code Computer including, without limitation, copying, removing, or  
20 transferring the source code onto any other computers or peripheral equipment. The  
21 receiving party will not transmit any source code in any way from the producing party's  
22 facilities or the offices of its outside counsel of record.

23 (ix) Documents designated CONFIDENTIAL SOURCE CODE may only be  
24 viewed by or disclosed to outside counsel or the receiving party's technical advisers  
25 approved by the producing party and their necessary support personnel. The term  
26 "technical adviser" shall mean an independent, outside expert witness or consultant with  
27 whom counsel may deem it appropriate to consult, subject to the following provision.  
28

1 Documents designated CONFIDENTIAL SOURCE CODE may not be disclosed to in-  
2 house counsel.

3 (x) A party desiring to disclose information to a technical adviser shall give  
4 prior written notice to the producing party or non-party, who shall have ten (10) business  
5 days after such notice is given to object in writing. A party desiring to disclose  
6 CONFIDENTIAL SOURCE CODE information to a technical adviser must provide the  
7 following information for each technical adviser: (i) name, address, curriculum vitae,  
8 current employer, and employment (including consulting) history for the past four (4)  
9 years; and (ii) a listing of cases in which the witness has testified as an expert at trial or by  
10 deposition within the preceding four years. No CONFIDENTIAL SOURCE CODE  
11 information shall be disclosed to such expert(s) or consultant(s) until after the expiration of  
12 the foregoing notice period.

13 (xi) The outside counsel and technical advisers (who have been approved to  
14 access source code under paragraphs 24(ix) and 24(x) above) for a receiving party shall  
15 maintain and store any paper copies of the source code or notes related to such source code  
16 (as referenced in paragraphs 24(v) and 24(vi)) at their offices in a manner that prevents  
17 duplication of or unauthorized access to the source code or notes, including, without  
18 limitation, storing the source code or notes in a locked room or cabinet at all times when  
19 those materials are not in use;

20 (xii) The receiving party's outside counsel of record may make no more than  
21 five additional paper copies of any portions of the source code files identified pursuant to  
22 paragraph 24(vi), not including copies attached to court filings, and shall maintain a log of  
23 all copies of the source code (received from a producing party) that are provided by the  
24 receiving party to any qualified person. The log shall include the names of the recipients  
25 and reviewers of copies and locations where the copies are stored. Any paper copies of  
26 source code shall be designated CONFIDENTIAL SOURCE CODE — and shall be stored  
27 or viewed only at (1) the offices of outside counsel for the receiving party, (2) the offices  
28 of technical advisers who have been approved to access source code under paragraphs

1 24(ix) and 24(x), (3) the site where any deposition is taken, (4) the Court, or (5) any  
2 intermediate location necessary to transport the information to a hearing, trial, or  
3 deposition. Any such paper copies shall be maintained at all times in a locked and secure  
4 location. The producing party shall not unreasonably deny a receiving party's request to  
5 make (and log) additional copies, providing that the request is for good cause and for use  
6 that otherwise complies with this order. The producing party shall be entitled to a copy of  
7 the log upon request, and at the conclusion of the litigation.

8 (xiii) The receiving party may include excerpts of source code in a pleading,  
9 exhibit, expert report, discovery document, deposition transcript, other Court document, or  
10 any drafts of these documents ("Source Code Documents"). The receiving party shall only  
11 include such excerpts as are reasonably necessary for the purposes for which such part of  
12 the source code is used — as an example, excerpts of approximately 25 to 40 lines in  
13 length are presumptively reasonable.

14 (xiv) To the extent portions of source code are quoted in a Source Code  
15 Document, either (1) the entire document will be stamped CONFIDENTIAL SOURCE  
16 CODE or (2) those pages containing quoted source code will be separately bound, and  
17 stamped as CONFIDENTIAL SOURCE CODE. All Source Code Documents shall also be  
18 marked with the legend "CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO  
19 PROTECTIVE ORDER," or a comparable notice, and shall be treated as Confidential  
20 Business Information pursuant to this Protective Order.

21 (xv) All paper copies of source code shall be securely destroyed if they are no  
22 longer necessary in the litigation (*e.g.*, extra copies at the conclusion of a deposition).  
23 Copies of source code that are marked as deposition exhibits shall not be provided to the  
24 court reporter or attached to deposition transcripts; rather, the deposition record will  
25 identify the exhibit by its production numbers.

26 (xvi) The receiving party may not create electronic images, or any other images,  
27 of the source code from the paper copy for use on a computer (*e.g.*, may not scan the  
28 source code to a PDF, or photograph the code). The receiving party may create an

1 electronic copy or image of selected portions of the source code only when reasonably  
2 necessary to accomplish any filing with the Court or to serve any pleadings or other papers  
3 on any other party (including expert reports). Images or copies of source code shall not be  
4 included in correspondence between the parties (references to production numbers shall be  
5 used instead) and shall be omitted from pleadings and other papers except to the extent  
6 permitted herein.

7 25. Unless otherwise ordered by the Court, Confidential Source Code designated as  
8 "CONFIDENTIAL SOURCE CODE" shall be subject to the provisions set forth in paragraphs 21  
9 to 26 and may be disclosed, subject to paragraphs 21 to 26, solely to:

10 (a) outside counsel representing the parties to this action, as defined in  
11 paragraph 3(i), including necessary secretarial and support personnel regularly employed by and  
12 assisting such counsel, except that, unless otherwise agreed, no outside counsel who is involved in  
13 competitive decision-making, as defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3  
14 (Fed. Cir. 1984), shall have access to Confidential Source Code designated as "CONFIDENTIAL  
15 SOURCE CODE;"

16 (b) any outside expert or consultant retained by a party for the purposes of this  
17 action and who satisfies paragraph 3(iii) of this Order, provided that disclosure is only to the  
18 extent necessary to perform such work; and provided that:

19 (i) such expert or consultant has agreed to be bound by the provisions  
20 of this Order as required by paragraphs 3, 4, and 11 of this Order,

21 (ii) such expert or consultant is not involved in competitive decision-  
22 making, as defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed.  
23 Cir. 1984), on behalf of a party or a competitor of a party in the technical subject  
24 matter of the Confidential Business Information produced, and

25 (iii) no unresolved objections to such disclosure exist after proper notice  
26 has been given to all parties as set forth in paragraphs 3, 4, and 11 of this Order;

27 (c) court reporters, stenographers, and videographers retained to record  
28 testimony taken in this action, provided that such court reporters, stenographers, and

1 videographers have agreed to be bound by the provisions of this Order as required by paragraph 4  
2 of this Order;

3 (d) the Court;

4 (e) any persons who are witnesses during a deposition, court hearing, or trial  
5 where specific documentary or testimonial evidence establishes at that time that the Confidential  
6 Source Code or portion of the Confidential Source Code was authored or received by the witness  
7 without any violation of any confidentiality obligation owed to any party in this action;

8 (f) any mediator who is assigned to hear this matter, and his or her staff,  
9 subject to their agreement to maintain confidentiality to the same degree as required by this Order;

10 (g) any other person with the prior written consent of the supplier.

11 26. Access to and review of the Confidential Source Code shall be strictly for the  
12 purpose of investigating the claims and defenses at issue in this action. No person shall review or  
13 analyze any Confidential Source Code for purposes unrelated to this action, nor may any person  
14 use any knowledge gained as a result of reviewing Confidential Source Code in this action in any  
15 other pending or future dispute, proceeding, patent prosecution, or litigation.

**1 AGREED AND STIPULATED TO:****2 CALFO HARRIGAN LEYH & EAKES LLP****SUMMIT LAW GROUP PLLC****3 By**

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18 ~~Attorneys for Defendants Motorola~~  
 19 ~~Solutions, Inc., Motorola Mobility, Inc.~~

**ORDER**

As stipulated above, IT IS SO ORDERED.

DATED this \_\_\_\_ day of \_\_\_\_\_, ~~2012~~2013.

\_\_\_\_\_  
THE HONORABLE JAMES L. ROBART

**Attachment A**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION, a  
Washington corporation,

Plaintiff,

vs.

MOTOROLA, INC., MOTOROLA  
MOBILITY, INC., and GENERAL  
INSTRUMENT CORPORATION;

Defendants

Case No. 10-1823

**PROTECTIVE ORDER REGARDING  
THE DISCLOSURE AND USE OF  
DISCOVERY MATERIALS**

**CONFIDENTIALITY AGREEMENT  
PURSUANT TO PROTECTIVE ORDER**

I, \_\_\_\_\_, hereby certify that I have read the Protective Order Regarding the Disclosure and Use of Discovery Materials (the "Order") in the above-captioned case, that I agree to comply with the Order in all respects, and that I hereby submit and waive any objection to the jurisdiction of the United States District Court for the Western District of Washington for the adjudication of any dispute concerning or related to my compliance with the Order.

I understand and agree, in particular, that any Confidential Business Information and any copies, excerpts, or summaries thereof, as well as any knowledge or information derived from any of the aforementioned items, may be used solely for purposes of this litigation and may not be used for any other purpose, including without limitation, and business, commercial or academic purpose.

1 I further understand and agree that failure to abide fully by the terms of the Order may  
2 result in legal action against me, including being held in contempt of court and liability for  
3 monetary damages.

4  
5 Signature: \_\_\_\_\_

6 Please print or type the following:

7 Name: \_\_\_\_\_

8 Title and Affiliation: \_\_\_\_\_

9 Address: \_\_\_\_\_

10 Telephone: \_\_\_\_\_

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**Attachment B**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION, a  
Washington corporation,

Plaintiff,

vs.

MOTOROLA, INC., MOTOROLA  
MOBILITY, INC., and GENERAL  
INSTRUMENT CORPORATION;

Defendants

Case No. 10-1823

**PROTECTIVE ORDER REGARDING  
THE DISCLOSURE AND USE OF  
DISCOVERY MATERIALS**

**NONDISCLOSURE AGREEMENT FOR  
REPORTER/STENOGRAPHER/TRANSLATOR**

I, \_\_\_\_\_, do solemnly swear or affirm that I will not divulge any information communicated to me in any confidential portion of the action or hearing in *Microsoft Corporation v. Motorola, Inc., Motorola Mobility, Inc., and General Instrument Corporation*, Civil Action No. 10-1823, except as permitted in the protective order issued in this case. I will not directly or indirectly use or allow the use of such information for any purpose other than that directly associated with my official duties in this case.

Further, I will not by direct action, discussion, recommendation, or suggestion to any person reveal the nature or content of any information communicated during any confidential portion of the action or hearing in this case.

1 I also affirm that I do not hold any position or official relationship with any of the  
2 participants in said action.

3 Signed \_\_\_\_\_

4 Dated \_\_\_\_\_

5 Firm or Affiliation \_\_\_\_\_

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